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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re LUCAS M., a Person Coming Under
the Juvenile Court Law.

B260037
(Los Angeles County
Super. Ct. No. DK02047)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JACOB N.,

Defendant and Appellant;

LORRIE N.,

Defendant and Respondent.

APPEAL from an order of the Superior Court of Los Angeles County. Anthony Trendacosta, Juvenile Court Referee. Reversed.

Lisa A. Raneri, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

No appearance for Defendant and Respondent.

Jacob N. (Father) appeals from a restraining order the juvenile court granted against him to protect Lorrie M. (Mother). He argues (1) his due process rights were violated because Mother failed to provide him with notice of the facts underlying her petition and (2) there is insufficient evidence to support a restraining order against him. We agree there is insufficient evidence to support the restraining order and reverse on that ground. Neither Mother nor the Los Angeles Department of Children and Family services (DCFS) filed briefs in this appeal.

BACKGROUND

On January 24, 2014, DCFS filed a juvenile dependency petition for Lucas M. (Child). DCFS alleged Mother and Father had “a history of engaging in violent altercations in the presence of” Child’s half sibling, Isabella M. (Sister). More specifically, DCFS alleged particular acts of violence perpetrated by both Mother and Father against each other. The court held a detention hearing the day the petition was filed and detained Child, granting parents monitored visitation. Father denied DCFS’s allegations.

During subsequent jurisdictional hearings, the court sustained a substantially amended version of the petition where it struck the language alleging specific acts of violence by Father against Mother. The remaining jurisdictional language read as follows: (1) Mother and Father “have a history of engaging in altercations in the presence of [Sister]. On 10/26/2013, [Mother] scratched [Father’s] forehead, neck and chest. [Mother] failed to protect [Sister], in that [Mother] allowed [Father] to reside in [Sister’s] home and to have unlimited access to [Sister]. Such conduct on the part of [Mother] and [Father] and [Mother’s] failure to protect [Sister] places [Child] at current risk of harm”; and (2) Father “has unresolved substance abuse including use of cocaine, which periodically renders [Father] incapable of providing regular care of [Child]. [Father’s] unresolved substance abuse placed [Child] at current risk of harm.” The court removed Child from Mother’s and Father’s physical custody and granted Father monitored visitation.

At the six-month review hearing on September 23, 2014, Mother requested a temporary restraining order (TRO) against Father.¹ Mother did not attach any supporting facts to the request. The court asked Mother if she wished to rely on DCFS's September 23, 2014 report to support the request, and she said yes. The court issued a TRO for Mother against Father. At the hearing for a permanent restraining order on October 8, 2014, Father was not present. The court took judicial notice of the DCFS report, which had been "previously received." Father's counsel argued there was no evidence attached to the request that would show how Mother was in fear of or at risk of being harmed by Father, including no evidence Father had ever harmed Mother. In fact, Father's counsel argued the DCFS report tended to show Mother was the aggressor and Father was the victim. The court found that "based upon the reports, indicated received on September 23, I believe that is, there is reported [*sic*]. And the court accepts as true this particular point." Because Father was "not [t]here to refute" the allegations and counsel did not make a statement, the court issued a three-year restraining order. Father appealed.

DISCUSSION

On appeal, Father argues (1) his due process rights were violated because Mother did not attach specific allegations to her request for a restraining order and (2) there is not substantial evidence to sustain the permanent restraining order. We agree there is not substantial evidence and reverse on that ground.

We review a restraining order for substantial evidence. (*In re B.S.* (2009) 172 Cal.App.4th 183, 193.) Under a substantial evidence test, a finding "will be upheld if it is supported by substantial evidence," which is "reasonable in nature, credible, and of solid value," "even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) "[W]e resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible." (*In re David M.*

¹ The court had already issued a TRO for Mother against Father on January 13, 2014, before Child was born. Mother withdrew her request for a more permanent restraining order less than a month later.

(2005) 134 Cal.App.4th 822, 828.) Substantial evidence is not “any evidence,” however. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1066, superseded by statute on different grounds as noted in *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032.) ““A decision supported by a mere scintilla of evidence need not be affirmed on appeal.”” (*David M.*, at p. 828.)

Mother did not present substantial evidence Father abused her or her safety would be in jeopardy absent a restraining order. (Cal. Rules of Court, rule 5.630(c); Family Code, § 6340; *In re C.Q.* (2013) 219 Cal.App.4th 355, 364–365.) Mother relied on the September 23, 2014 DCFS report to support her request. That report, however, contained only one specific allegation of violence against Mother by Father, as reported in the jurisdictional grounds of Sister’s Welfare and Institutions Code section 300 petition.² The allegation stemmed from a domestic violence dispute on October 25, 2013. When police arrived after the dispute, Father was visibly injured in several places. Mother was not, which law enforcement noted was in contradiction to her statements Father had choked, slapped, and hit her. Although DCFS at points characterized Father as a “victim” of Mother, Father later denied Mother had intentionally hurt him and said his injuries were the result of Mother grabbing onto him while she was falling. DCFS’s only other allegation of Father’s violence in the September report is a bare accusation, also contained in Sister’s section 300 petition: “On prior occasions, the male companion [Father] struck” Mother.

As to DCFS’s specific allegation of violence, it is unclear exactly what happened on October 25, 2013, between Mother and Father. What is clear is that there was no physical evidence to validate Mother’s version of events that Father injured her. Father had no chance to defend himself against these allegations in Sister’s dependency proceedings because he was not a party to it. When essentially the same allegations were made in these proceedings, the court did not sustain the allegations. Mother failed to submit a copy of Sister’s sustained petition or request the court to take judicial notice of

² Undesignated statutory references are to the Welfare and Institutions Code.

it. As such, the court had no confirmation DCFS's account of Sister's petition's jurisdictional language accurately reflected the actual sustained findings, as opposed to the original allegations of Father's violence. As to DCFS's general allegation of past violence, DCFS did not submit a scintilla of supporting evidence to substantiate the allegation.

It also appears Mother allowed Father to violate her first TRO against him by permitting Father to visit her and Child in the hospital after Child's birth; she also did not seek to enforce the TRO even when a DCFS worker was present for Father's violation. (§ 213.5, subd. (j)(2) [dictating that courts must consider prior restraining orders when issuing a new one].) Finally, as noted, neither Mother nor DCFS have appeared in this appeal.

Mother's one specific allegation of Father's violence is unverified. Her other allegation, that Father struck her in the past, is unsupported by any facts. We cannot sustain a three-year restraining order based on one unverified accusation of violence and one unsupported allegation of past violence.

DISPOSITION

The restraining order is reversed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.